

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| DAVID HODGE, | : | |
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| Plaintiff, | : | MEMORANDUM DECISION AND |
| | : | ORDER |
| – against – | : | |
| | : | 24-CV-1631 (AMD) (LB) |
| NEW YORK UNEMPLOYMENT, | : | |
| | : | |
| Defendant. | : | |
| ----- | X | |
| ANN M. DONNELLY , United States District Judge: | | |

Before the Court is the *pro se* plaintiff’s complaint (ECF No. 1) and application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 (ECF No. 2). The plaintiff’s *in forma pauperis* application is granted for the limited purpose of this Order. For the following reasons, the complaint is dismissed.

BACKGROUND

The plaintiff is a resident of Brooklyn, New York. (ECF No. 1 at 2.) The complaint states, in its entirety: “I’m currently homeless and I have unemployment ben[e]fits and I want to know if I can use my benefits to put a deposit down on an apartment.” (ECF No. 1 at 5.)

LEGAL STANDARD

A *pro se* plaintiff’s complaint must be “liberally construed, and . . . however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citations omitted). However, the Court must dismiss an *in forma pauperis* complaint if it “is frivolous,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Further, if the Court “determines at any time that it lacks

subject-matter jurisdiction, [it] must dismiss the action.” Fed. R. Civ. P. 12(h)(3); *see also Cortlandt St. Recovery Corp. v. Hellas Telecomms., S.A.R.L.*, 790 F.3d 411, 416–17 (2d Cir. 2015).

DISCUSSION

Notwithstanding the liberal pleading standard afforded *pro se* litigants, federal courts may not preside over cases if subject matter jurisdiction is lacking. *Lyndonville Sav. Bank & Trust Co. v. Lussier*, 211 F.3d 697, 700–01 (2d Cir. 2000); *see also* Fed. R. Civ. P. 12(h)(3).

28 U.S.C. § 1331 provides that “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.” “A case aris[es] under federal law within the meaning of § 1331 . . . if a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 689–90 (2006).

28 U.S.C. § 1332 provides that federal jurisdiction may also be established where there is a diversity of citizenship between the parties and the amount in controversy exceeds \$75,000. To establish diversity jurisdiction, there must be complete diversity of citizenship between the plaintiff and the defendants. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). This means that the plaintiff cannot be a citizen of the same state as any of the defendants. *St. Paul Fire and Marine Ins. Co. v. Universal Builders Supply*, 409 F.3d 73, 80 (2d Cir. 2005).

The plaintiff sues “New York Unemployment,” but he does not assert a cause of action or articulate what it is alleged to have done. He simply asks whether he may use his employment benefits to put down a deposit on an apartment. Because the complaint does not raise a colorable

federal claim or plead facts establishing complete diversity, the Court does not have subject matter jurisdiction and the action must be dismissed. Although courts hold *pro se* complaints “to less stringent standards than formal pleadings drafted by lawyers,” *Hughes v. Rowe*, 449 U.S. 5, 9 (1980), *pro se* litigants must establish subject-matter jurisdiction. *See, e.g., Reyes v. New York Presbyterian Hosp.*, No. 20-CV-3046, 2020 WL 6161261, at *2 (E.D.N.Y. Oct. 21, 2020); *Rene v. Citibank N.A.*, 32 F. Supp. 2d 539, 541-42 (E.D.N.Y. 1999).

Accordingly, the complaint is dismissed without prejudice.

LEAVE TO AMEND

A *pro se* plaintiff should ordinarily be given the opportunity “to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated.” *Shomo v. City of New York*, 579 F.3d 176 (2d Cir. 2009) (quoting *Gomez v. USAA Fed. Sav. Bank*, 171 F.3d 794, 795-96 (2d Cir. 1999) (internal quotation marks omitted)). However, while “*pro se* plaintiffs are generally given leave to amend a deficient complaint, a district court may deny leave to amend when amendment would be futile.” *Id.* (citations omitted).

The Court has carefully considered whether leave to amend is warranted here. The plaintiff does not assert a cause of action or articulate what the defendant is alleged to have done. Rather, he appears to be asking the Court a question. Thus, “there is no reason to believe that permitting further amendment would yield a viable claim against” the defendant, or invoke properly the Court’s jurisdiction. *Burke v. Verizon Commc’ns, Inc.*, No. 18-CV-4496, 2020 WL 6538748, at *8 (S.D.N.Y. Nov. 6, 2020). Accordingly, leave to amend is denied.

CONCLUSION

The action is dismissed without leave to amend. The Clerk of Court is respectfully directed to close the case.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore in forma pauperis status is denied for the purpose of any appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

s/Ann M. Donnelly

ANN M. DONNELLY

United States District Judge

Dated: Brooklyn, New York
April 8, 2024